

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
DEPARTMENT OF THE ARMY
UNITED STATES OF AMERICA

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY

Respondent.

PCHB No. 80-100

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER, the appeal of a \$250 civil penalty for the alleged violation of section 9.03 of respondent's Regulation I, came before the Pollution Control Hearings Board, Nat W. Washington, Chairman, and David Akana (presiding) at a formal hearing in Tacoma, Washington, on July 28, 1980.

Respondent was represented by its attorney, Keith D. McGoffin; appellant was represented by its attorney, Richard McCurdy. Sandra Coleman, court reporter, recorded the proceeding.

Having heard the testimony, having examined the exhibits, and having considered the contentions of the parties, the Board makes these

FINDINGS OF FACT

I

On February 19, 1980, at approximately 12:50 p.m. in response to citizen complaints, respondent's inspector visited the site of appellant's facility located at 14631 SE 192nd Street in Renton, Washington. Upon arrival, the inspector saw a dark plume coming from appellant's boiler stack on the facility. After positioning himself, he took a reading of the plume and recorded an opacity of 90 to 100 percent for a period of six and one-half consecutive minutes. A person at the facility was contacted by the inspector and told the inspector that she was aware of the emissions.

For the foregoing events, appellant was sent a notice of violation of section 9.03 from which followed a \$250 civil penalty and this appeal.

II

After being informed of the notice of violation, appellant promptly shut down the boiler and arranged for corrective services on the equipment. This led to replacement of various parts of the boiler at a cost of \$2,550.

Appellant had no previous notice that its boiler was malfunctioning.

III

Pursuant to RCW 43.21B.260 respondent has filed with the Board a certified copy of its Regulation I and amendments thereto which are noticed.

Section 9.03(b) makes it unlawful for any person to cause or allow the emission of an air contaminant for more than three minutes in any

one hour which is of an opacity equal to or greater than twenty percent.

Section 3.29 provides for a civil penalty of up to \$250 per day for each violation of Regulation I.

IV

Any Conclusions of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Board comes to these

CONCLUSIONS OF LAW

I

Appellant knowingly violated section 9.03 of respondent's Regulation I on February 19, 1980, as alleged. Therefore, the imposition of a civil penalty was proper.

II

Appellant's prompt actions with respect to the adjustment and repair of its boiler, and the expenditures of a substantial amount of money to correct the cause of the malfunction are circumstances which persuade us to suspend a portion of the penalty for a period of six months.

III

Any Findings of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions, the Board enters this

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER


ORDER

The \$250 civil penalty is affirmed, provided, however, that \$200 thereof is suspended on condition that appellant not violate respondent's Regulation I for a period of six months from the date of this Order.

DATED this 20th day of August, 1980.

POLLUTION CONTROL HEARINGS BOARD


NAT W. WASHINGTON, Chairman


DAVID AKANA, Member

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER